

Territorio y Ciudad

Att: Manuel A. González Fustegueras, Chief Executive Officer

C/ Santo Domingo, 7 Duplicado.

11402 Jerez de la Frontera.

Spain

Brussels, 09.08.2021

RE. TERRITORIO Y CIUDAD'S REPORT ON TRANSFORMING DAKHLA, OCCUPIED WESTERN SAHARA INTO AN ECO-CITY

Dear Mr González Fustegueras,

Western Sahara Resource Watch (WSRW) is privileged to present you with our regards. We are writing in relation to parts of a study published on your website, entitled "Study Concerning an Eco-City in Dakhla, Morocco".¹

The study, seemingly outlining lines of intervention for transforming Dakhla into a sustainable city. The study has apparently, yet incorrectly, situated the town in Morocco.

Dakhla is not located in Morocco. While Morocco has militarily invaded and annexed the part of Western Sahara that includes Dakhla, it is not internationally recognised as having any sovereignty or administering mandate over the territory. Rather the contrary. The United Nations to date regard Western Sahara as the only Non-Self-Governing Territory without an administering power in place.² The International Court of Justice could not find any ties of sovereignty between Morocco and Western Sahara and emphasized the Saharawi people's right to self-determination: the right to freely determine the political status of their homeland.³

In recent years, the EU Court of Justice has ruled in four consecutive cases that Western Sahara is a territory that is "separate and distinct" from Morocco, and the latter has no mandate to administer the territory.⁴

The Supreme Court of Spain in 2014 concluded that Spain still holds responsibility as administering power of the territory.⁵ It is as such remarkable that a Spanish urban planification firm would draw up plans for altering a town in occupied Western Sahara through a contract with – presumably – the Moroccan government, which is listed as a client on Territorio y Ciudad's webpage.⁶

We are deeply concerned over your involvement in Morocco's plans for the city in occupied Western Sahara. We'd be most grateful if you could provide answers to the following questions:

1. Who has commissioned Territorio y Ciudad to develop a study on transitioning Dakhla to an eco-city?

¹ https://territorioyciudad.com/en/portfolio_page/dakhla

² United Nations, Non-Self-Governing Territories, <https://www.un.org/dppa/decolonization/en/nsgt>

³ International Court of Justice, Advisory Opinion of 16 October 1975 on Western Sahara, <https://www.icj-cij.org/public/files/case-related/61/061-19751016-ADV-01-00-EN.pdf>

⁴ The Rulings in cases T-512/12, C-104/16 P, T-180/14, T-275/18 and T-376/18 can be accessed via <https://eur-lex.europa.eu>

⁵ Spanish National High Court, Order No 40/2014, https://wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_izik.pdf

⁶ <https://territorioyciudad.com/clientes>

- a. Was Territorio y Ciudad contracted by a Moroccan national/regional/local administration or agency for the study?
 - b. If affirmative to 1.a: In which legal capacity do Moroccan authorities issue such contracts? Is Moroccan domestic law the applicable law to the contract?
2. Has Territorio y Ciudad sought the consent of the UN-recognised representative of the people of Western Sahara, the Polisario Front,⁷ to undertake the study?
3. Has the full study been shared with the people of Western Sahara? If yes, how? If not, why?
4. Can the full study be shared with WSRW, so we can publish it online, for it to be accessible for the people of Western Sahara?
5. Can Territorio y Ciudad send us a copy of the Terms of Reference of your agreement in relation to this study, so we can publish it online, for it to be accessible for the people of Western Sahara?
6. Has Territorio y Ciudad travelled to the territory of Western Sahara in relation to the study?
7. Does Territorio y Ciudad agree with the judgments by the EU Court of Justice concluding that Western Sahara is not part of Morocco?
8. What is your assessment of the legal status of Western Sahara under international law?
9. What is your assessment of the legal status of Morocco's presence in parts of Western Sahara under international law?
 - a) Does Morocco have sovereignty over Western Sahara?
 - b) Is Morocco the administering power of Western Sahara as defined by the UN Charter? If yes, please explain how Territorio y Ciudad has come to this conclusion.
 - c) Is Morocco occupying parts of Western Sahara under international humanitarian law? If so, can Morocco act directly through its national administration in Western Sahara or does it have to establish a separate and distinct military authority as the Israeli government did in relation to the West Bank in 1967?
10. Is Territorio y Ciudad of the view that Morocco has the right to undertake infrastructure projects in Western Sahara?
11. Does Territorio y Ciudad's contract for the study require any further work from the company? If so, what?
12. Did Territorio y Ciudad carry out a human rights due diligence before engaging in a study on Dakhla?

For the sake of transparency, we wish to inform you that we will publish an article on our website about Territorio y Ciudad's study. We'd appreciate the opportunity to include your views, and therefore invite your response to the above questions by 20 August 2021.

Thank you in advance for your consideration of our questions, and we look forward to hearing from you.

Sincerely,

Sara Eyckmans

Coordinator

Western Sahara Resource Watch

coordinator@wsrw.org

⁷ Please see UNGA Resolution 34/37, §7, which refers to the "Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro", or POLISARIO, as "the representative of the people of Western Sahara".